DEPARTMENT OF SOCIAL SERVICES
744 P Street, Sacramento, California 95814

September 23, 1999

ALL COUNTY INFORMATION NO. I-71-99

TO: ALL COUNTY WELFARE DIRECTORS
     ALL FOOD STAMP COORDINATORS
     ALL CalWORKs PROGRAM SPECIALISTS
     ALL CHIEF WELFARE FRAUD INVESTIGATORS
     ALL DISTRICT ATTORNEYS

> REASON FOR THIS TRANSMITTAL
>
> [ ] State Law Change
> [ ] Federal Law or Regulation
>   Change
> [ ] Court Order
> [X] Clarification Requested by
>   One or More Counties
> [ ] Initiated by CDSS

SUBJECT: DRUG FELON QUESTIONS AND ANSWERS

This All County Information Notice (ACIN) provides answers to a number of questions regarding drug felons. The CalWORKs regulations in the Manual of Policy and Procedures(MPP) Sections 40-034.1 and 82-832.20 were implemented as a requirement of AB 1542. Per these regulations, persons convicted in a state or federal court of a felony related to the possession, use, or distribution of a controlled substance after December 31,1997 are ineligible for aid under CalWORKs.

Food Stamp Manual Section 63-402.229 specifies that individuals convicted (under federal or state law) of any felony that has as an element the possession, use, or distribution of a controlled substance is disqualified from the Food Stamp Program. This is a permanent exclusion and shall only affect a conviction if the conviction is for conduct occurring after August 22, 1996.

1.   QUESTION: A person pleads guilty to a drug felony, and the court defers or withholds the entry of judgment if the person agrees to enter a drug court/diversion program. While in the drug court/diversion program, is this person considered a convicted drug felon?

ANSWER: No, the person is not a convicted drug felon and is eligible for CalWORKs and Food Stamps. If judgment is deferred or withheld and the person enters a drug court/diversion program, s/he is eligible for CalWORKs and Food Stamps while s/he continues to meet the program requirements. A plea of guilty does not constitute a conviction. A conviction occurs the date the judge enters a judgment.

2.   QUESTION: While in the drug court/diversion program, the person does not continue to meet all of the program requirements (e.g., the person fails a periodic drug test). The judge now enters a judgment on the prior plea of guilty. Is the person now a convicted drug felon and ineligible for CalWORKs and Food Stamps?

ANSWER: Yes, the date the judge enters a judgment, the person is a convicted drug felon and is ineligible for CalWORKs and Food Stamps. Should a client fail to comply with the terms of drug court/diversion it is the judge's decision whether the judgement entered is effective from the time of non-compliance, or back to the date the defendant pled to the charges. Counties will use the date the judge enters the judgement as the date a person is considered a convicted felon.

3.   QUESTION: If the judgment is backdated to the date of the guilty plea, on what date is the person ineligible for CalWORKs and Food Stamps?

ANSWER: Counties will use the date the judge enters a judgment (conviction) to make the person ineligible for CalWORKs and Food Stamps. From that date forward, the person is a convicted drug felon.

4.   QUESTION: The judge backdates the entry of judgment to the date of the guilty plea. Is there a CalWORKs overpayment or Food Stamp overissuance for the months in which the judgment was deferred or withheld?

ANSWER: No, the county cannot establish an overpayment for CalWORKs or an overissuance for Food Stamps for the months in which the judgement was deferred or withheld. At the time the judgment was deferred or withheld, the person was not a convicted drug felon and in good faith did not misrepresent her/his status.

If the person fails to meet the requirements of the drug treatment or diversion program and a judgement is entered, the person is convicted of a drug felony. S/he would be ineligible for CalWORKs and Food Stamps the date the judge enters a judgement. Previous CalWORKs and Food Stamps received while participating in the drug treatment or diversion program would not be an overpayment or an overissuance since s/he was eligible at the time of receipt of aid.

EXAMPLE:

A recipient pleads guilty to a felony drug charge on July 19, 1999. The judge defers judgement if the recipient participates in a drug diversion program. The recipient agrees and enters the program.

November 15, 1999, the recipient fails to meet program requirements. On December 14, 1999, the judge enters the judgement, accepting the earlier plea of guilty. At the judge's discretion, the conviction is backdated to the date of the guilty plea (July 19, 1999).

The recipient received benefits continuously since January 15, 1999. The client was eligible to CalWORKs and Food Stamps until the date the judge entered a judgement (December 14, 1999). There are no CalWORKs overpayments or Food Stamp overissuances from July, 1999 through December 1999.

5.   QUESTION: If a previously entered judgment resulting in a felony drug conviction is now reduced to a misdemeanor or the record is expunged, is this person now eligible for CalWORKs and Food Stamps and no longer considered a convicted drug felon?

ANSWER: Yes, the person is now eligible for CalWORKs and Food Stamps and is no longer considered a convicted felon from the date the felony is reduced to a misdemeanor or the date the record is expunged. However, eligibility is not retroactive. There is no eligibility prior to the date the conviction is reduced to a misdemeanor or the date the record is expunged.

It is important to note, the burden for seeking reduction of the felony drug conviction to a misdemeanor or expungement of the record lies with the client, and does not occur automatically, but requires court action. This change in the clients' record is documented by the courts.

6.   QUESTION: If the individual is no longer considered a convicted drug felon and is now eligible for Food Stamps, when is this individual added to the Food Stamp budget?

ANSWER: When there is a reported change that results in an increase in household benefits due to the addition of a new household member, the CWD must make a determination of eligibility of the new household member within 30 days of the date the change was reported. In making this determination, the CWD has the option of either requiring the household to complete the CA 8, or contacting the household to obtain the needed information and update the last application. The CWD shall issue benefits for the new household member effective the first of the month following the month the change was reported (see Food Stamp Manual Section 63-504.353).

7.   QUESTION: Is a minor who is a drug offender eligible for CalWORKs and Food Stamps?

ANSWER: If the minor is tried for a drug offense that is not a felony, s/he is eligible for CalWORKs and Food Stamps. Only in the case of a juvenile convicted of a drug felony in a criminal court proceeding would the juvenile be ineligible for CalWORKs and Food Stamps. In order for a juvenile to be convicted of a felony, s/he must be tried as an adult.

A minor cannot be tried as an adult for a felony committed while under the age of 16. Criminal acts by these persons would fall within the exclusive jurisdiction of the juvenile court. A juvenile court is empowered to determine that a minor "16 years or older" is not a proper subject to be dealt with under the juvenile court law. If this finding is made, the minor is certified to a court of criminal jurisdiction for criminal prosecution instead of juvenile adjudication. The juvenile is said to be tried as an adult and may suffer a "felony conviction".

Counties are encouraged to continue to work closely with the special investigative unit in their local office or office of the District Attorney on issues relating to convicted drug felons. For questions regarding CalWORKs, please call Dorette Pierce at (916) 654-1867; for Food Stamps, call Valrie Marglin at (916) 654-1898, and for fraud-related issues, call Lesley Bell at (916) 263-5724.

Sincerely,
Original document signed by
Maria Hernandez for Charr Lee Metsker
on September 23, 1999
CHARR LEE METSKER, CHIEF
Employment and Eligibility Branch

c: CWDA
         CSAC